

## Chapter 579

(House Bill 208)

AN ACT concerning

### **Aquaculture – Shellfish Leasing Areas – Expansion**

FOR the purpose of altering the areas within which the Secretary of Natural Resources may establish certain limits relating to aquaculture; authorizing the Department of Natural Resources to resurvey certain areas for a certain purpose; requiring the Department to amend natural oyster bar charts or coordinates by regulation under certain circumstances; altering the location restrictions for Aquaculture Enterprise Zones and submerged land leases; establishing certain restrictions for Aquaculture Enterprise Zones and leases of submerged land located within a sanctuary; ~~providing that certain riparian owners have the right of first refusal to apply on or before a certain date for an aquaculture lease under certain circumstances;~~ providing that the Department may only issue a shellfish lease to a corporation under certain circumstances; providing that certain restrictions on the locations of submerged land leases do not apply to certain persons with certain riparian rights; making a certain technical correction; making the provisions of this Act severable; altering certain definitions; defining a certain term; and generally relating to oysters and shellfish aquaculture.

BY repealing and reenacting, with amendments,

Article – Natural Resources

Section 4–1001(o), 4–1009, 4–1101(i), 4–11A–01(f) and (j), 4–11A–05, 4–11A–06, 4–11A–07, and 4–11A–16

Annotated Code of Maryland

(2005 Replacement Volume and 2010 Supplement)

BY adding to

Article – Natural Resources

Section 4–1102 and 4–11A–01(r)

Annotated Code of Maryland

(2005 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### **Article – Natural Resources**

4–1001.

(o) “Natural oyster bar” means any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912[, ] and its amendments[, or any area declared by any circuit court to be a natural oyster bar, or any area on which the Department plants oysters or shells. A natural oyster bar also means any bar beneath the waters of the State where the natural growth of oysters abounds to the extent that the public has resorted to the bar for a livelihood, whether continuously or at intervals, during any oyster season within five years prior to the filing of any application for a lease of the area in question, or within five years prior to the making of a resurvey under the provisions of Subtitle 11. The actual conditions of the area in question at any time within the five-year period shall be considered in determining whether or not the area is a natural oyster bar].

4-1009.

(a) During the closed season for taking oysters, a person may take seed oysters from the natural bars of the State marked by the Department for a period not exceeding one month in any one year, at times designated by the Department. The seed oysters shall be taken only in accordance with rules and regulations the Department prescribes, sold only to lessees of private oyster grounds, delivered only on leased oyster bottoms and subject to the provisions of § 4-1103(c) of this title.

(b) The Secretary may establish by rule or regulation daily catch limits on the quantities of oysters which may be caught from the [natural oyster bars] **WATERS** of the State **EXCEPT LEASED AREAS AND AQUACULTURE ENTERPRISE ZONES**, and may amend the daily catch limits to conserve the public oyster resource. Notice of the establishment or amendment of these catch limits, including all applicable reasons for the Department’s action, shall be given before publication, to the Joint Committee on Administrative, Executive, and Legislative Review and by publication of the notice in at least one newspaper of general circulation in the State, in at least one newspaper of general circulation in each county in which the affected waters are located, and on the website of the Department not less than one week prior to the effective date.

(c) A person may not land, sell, or attempt to land or sell on any day oysters from the waters of the State exceeding the daily catch limit established by the Secretary by more than 10 percent. However, in emergencies, the Department may authorize unloading up to two daily catch limits in 1 day. A licensed oyster buyer or dealer may sell or attempt to sell oysters which he shows were purchased from another catcher.

(d) All oysters landed or offered for sale on any day by any person licensed to catch oysters which are in excess of the daily catch limit shall become the property of the State, and payment shall be made directly to the State by the buyer or receiver of the oysters at the same price paid the catcher for the balance of his catch. All funds received under this subsection shall be deposited to the credit of the Fisheries Research and Development Fund and shall be used for repletion of the natural oyster bars of the State.

4-1101.

(i) “Natural oyster bar” means any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912[,] and its amendments[, or any area declared by any circuit court to be a natural oyster bar, or any area on which the Department plants oysters or shells. A natural oyster bar also means any bar beneath the waters of the State where the natural growth of oysters abounds to the extent that the public has resorted to the bar for a livelihood, whether continuously or at intervals, during any oyster season within five years prior to the filing of any application for a lease of the area in question, or within five years prior to making of a resurvey under § 4-1102. The actual condition of the area in question at any time within the five-year period shall be considered in determining whether or not the area is a natural oyster bar].

4-1102.

**(A) THE DEPARTMENT MAY RESURVEY ANY SUBMERGED AREA OF THE STATE TO DETERMINE THE POSITION AND EXTENT OF ANY NATURAL OYSTER BAR.**

**(B) IF, AFTER CONDUCTING A SURVEY IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT FINDS THAT ANY NATURAL OYSTER BAR IS LOCATED INCORRECTLY ON EXISTING CHARTS OR THAT THE EXISTING CHARTS DO NOT REFLECT THE ACTUAL CONDITION OF SUBMERGED LANDS, THE DEPARTMENT SHALL AMEND THE EXISTING CHARTS OR COORDINATES BY REGULATION.**

4-11A-01.

(f) “Chesapeake Bay” means the waters commonly known as the Chesapeake Bay **AS DEFINED BY THE CHARTS OF THE OYSTER SURVEY OF 1906 TO 1912 AND ITS AMENDMENTS.**

(j) “Natural oyster bar” means any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912[,] and its amendments[, or any area declared by any circuit court to be a natural oyster bar, or any area on which the Department plants oysters or shells].

**(R) “YATES BAR” MEANS ANY SUBMERGED OYSTER BAR, REEF, ROCK, OR AREA REPRESENTED AS AN OYSTER BAR ON THE CHARTS OF THE OYSTER SURVEY OF 1906 TO 1912 NOT INCLUDING ANY AMENDMENTS.**

4-11A-05.

(a) This section applies to leasing in an Aquaculture Enterprise Zone in the Chesapeake Bay.

(b) (1) In consultation with the Department of the Environment and the Wetlands Administrator of the Board of Public Works, the Department shall establish Aquaculture Enterprise Zones in the Chesapeake Bay.

(2) An Aquaculture Enterprise Zone may not be located:

(i) Within a minimum of 50 feet of shoreline or any pier without the written permission of the riparian owner at the time of designation of the Aquaculture Enterprise Zone;

(ii) Within 150 feet of the public shellfish fishery or a registered pound net site;

(iii) Within 150 feet of an [oyster sanctuary or] oyster reserve **OR ANY YATES BAR LOCATED IN AN OYSTER SANCTUARY;**

(iv) Within 150 feet of a federal navigational channel;

(v) In any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide; or

(vi) In an SAV Protection Zone.

(3) In determining the location of an Aquaculture Enterprise Zone, the Department shall consider potential conflicts presented by other uses of the proposed area, to include navigation, recreation, and commercial fishing.

(4) Before adopting regulations establishing an Aquaculture Enterprise Zone, the Department shall hold a public hearing in the county or counties immediately adjacent to the proposed location of the Aquaculture Enterprise Zone.

(c) (1) Subject to paragraph (2) of this subsection, the Department may issue to any person an aquaculture lease in an Aquaculture Enterprise Zone.

(2) (i) **1.** The Department shall set aside 25% of each Aquaculture Enterprise Zone for leasing to persons who hold tidal fish licenses under Subtitle 7 of this title and who have actively used those licenses during the 3 years preceding June 1, 2009.

~~(ii)~~ **2.** An applicant for a lease under this ~~paragraph~~ **SUBPARAGRAPH** shall comply with the provisions for leasing set forth in this subtitle.

~~(iii)~~ **3.** The set-aside provided for in ~~subparagraph (i)~~ **SUBSUBPARAGRAPH 1** of this ~~paragraph~~ **SUBPARAGRAPH** shall expire June 1, 2011.

**(II) THE DEPARTMENT MAY ISSUE AN AQUACULTURE LEASE TO A CORPORATION ONLY IF:**

**1. THE CORPORATION IS ORGANIZED UNDER THE LAWS OF THE STATE; AND**

**2. MORE THAN 50% OF THE STOCK IN THE CORPORATION IS OWNED BY RESIDENTS OF THE STATE.**

(3) [the] **THE** Department may establish a buffer between leased areas within an Aquaculture Enterprise Zone.

(d) A person who leases an area in an Aquaculture Enterprise Zone may cultivate shellfish:

(1) On the submerged land;

(2) In temporary protective enclosures approved by the Department on the surface of the submerged land;

(3) Subject to approval by the United States Army Corps of Engineers, on or under the surface of the water in a floating structure or in a structure on the submerged bottom, except that the height of the structure may not exceed 18 inches; or

(4) In any other manner authorized by the Department.

**(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, AN AQUACULTURE ENTERPRISE ZONE LOCATED WITHIN A SANCTUARY MUST BE COMPATIBLE WITH OYSTER RESTORATION AND MUST SATISFY THE CRITERIA FOR PERMISSIBLE LEASING WITHIN A SANCTUARY AS PROVIDED IN REGULATIONS ADOPTED UNDER THIS SUBTITLE.**

4-11A-06.

(a) This section applies to a submerged land lease in the Chesapeake Bay that is not in an Aquaculture Enterprise Zone.

(b) (1) **(I) The SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE** Department may issue to a person a submerged land lease in waters of the Chesapeake Bay that meet applicable water quality requirements for shellfish cultivation as determined by the Department of the Environment.

**(II) THE DEPARTMENT MAY ISSUE A SUBMERGED LAND LEASE IN THE WATERS OF THE CHESAPEAKE BAY TO A CORPORATION ONLY IF:**

**1. THE CORPORATION IS ORGANIZED UNDER THE LAWS OF THE STATE; AND**

**2. MORE THAN 50% OF THE STOCK IN THE CORPORATION IS OWNED BY RESIDENTS OF THE STATE.**

(2) A submerged land lease may not be located:

(i) Within a minimum of 50 feet of shoreline or any pier without the written permission of the riparian owner at the time of initial application for the lease;

(ii) Within 150 feet of the public shellfish fishery or a registered pound net site;

(iii) Within 150 feet of an [oyster sanctuary or] oyster reserve **OR ANY YATES BAR LOCATED IN AN OYSTER SANCTUARY;**

(iv) Within 150 feet of a federal navigational channel;

(v) ~~In~~ **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION,** IN any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide; or

(vi) In an SAV Protection Zone.

**(3) PARAGRAPH (2)(V) OF THIS SUBSECTION DOES NOT APPLY TO A RIPARIAN OWNER OR A LAWFUL OCCUPANT OF THE RIPARIAN PROPERTY.**

(c) A person with a submerged land lease in the Chesapeake Bay may cultivate shellfish on the submerged land, in temporary protective enclosures approved by the Department on the surface of the submerged land, or in any other manner authorized by the Department.

**(D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A LEASE OF SUBMERGED LAND LOCATED WITHIN A SANCTUARY MUST BE COMPATIBLE WITH OYSTER RESTORATION AND MUST SATISFY THE CRITERIA FOR PERMISSIBLE LEASING WITHIN A SANCTUARY AS PROVIDED IN REGULATIONS ADOPTED UNDER THIS SUBTITLE.**

(a) This section applies to a submerged land lease in the waters of the Atlantic Coastal Bays.

(b) **(1)** ~~The~~ **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE** Department may issue to a person a submerged land lease in waters of the Atlantic Coastal Bays that meet applicable water quality requirements for shellfish cultivation as determined by the Department of the Environment.

**(2) THE DEPARTMENT MAY ISSUE A SUBMERGED LAND LEASE IN THE WATERS OF THE ATLANTIC COASTAL BAYS TO A CORPORATION ONLY IF:**

**(I) THE CORPORATION IS ORGANIZED UNDER THE LAWS OF THE STATE; AND**

**(II) MORE THAN 50% OF THE STOCK IN THE CORPORATION IS OWNED BY RESIDENTS OF THE STATE.**

(c) **(1)** A submerged land lease may not be located:

~~(1)~~ **(I)** Within a minimum of 50 feet of shoreline or any pier without the written permission of the riparian owner at the time of initial application for the lease;

~~(2)~~ **(II)** Within 150 feet of the public shellfish fishery or a registered pound net site;

~~(3)~~ **(III)** Within 150 feet of any [oyster sanctuary or] oyster reserve **OR A YATES BAR LOCATED IN AN OYSTER SANCTUARY;**

~~(4)~~ **(IV)** Within 150 feet of a federal navigational channel;

~~(5)~~ **(V)** ~~In~~ **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,** IN any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide;

~~(6)~~ **(VI)** In an SAV Protection Zone; or

~~(7)~~ **(VII)** In a setback or buffer from the Assateague Island National Seashore established by the Department.

**(2) PARAGRAPH (1)(V) OF THIS SUBSECTION DOES NOT APPLY TO A RIPARIAN OWNER OR A LAWFUL OCCUPANT OF THE RIPARIAN PROPERTY.**

(d) A person with a submerged land lease in the Atlantic Coastal Bays may cultivate shellfish on the submerged land, in temporary protective enclosures

approved by the Department on the surface of the submerged land, or in any other manner authorized by the Department.

(e) (1) The Department may establish submerged land areas in the Atlantic Coastal Bays that:

- (i) Are preapproved for leasing;
- (ii) May not be leased;
- (iii) May be approved for leasing only on specific application and review by the Department.

(2) In establishing areas that are preapproved for leasing or that may not be leased under paragraph (1) of this subsection, the Department shall consider potential conflicts presented by other uses of the proposed area, including navigation, recreation, and commercial fishing.

**(F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A LEASE OF SUBMERGED LAND LOCATED WITHIN A SANCTUARY MUST BE COMPATIBLE WITH OYSTER RESTORATION AND MUST SATISFY THE CRITERIA FOR PERMISSIBLE LEASING WITHIN A SANCTUARY AS PROVIDED IN REGULATIONS ADOPTED UNDER THIS SUBTITLE.**

4-11A-16.

[(a) An owner or other lawful occupant shall have exclusive right to use any creek, cove, or inlet for preserving or depositing oysters or other shellfish if the water surface at the mouth of the creek, cove, or inlet is 300 feet or less in width at mean low water. However, this cove, creek, or inlet may not be included in the lines of any patent and all rights of the riparian proprietor shall extend only to the middle of the creek, cove, or inlet. In the waters of St. Mary's County, the riparian grounds of any creek, cove, or inlet meeting the qualifications enumerated above shall be considered and treated as leased grounds for all of the purposes of § 4-11A-13 of this subtitle. However, any dredging license issued under § 4-11A-13 of this subtitle shall be issued only to the riparian owner for the purpose of dredging shellfish on his riparian grounds. In the waters of Dorchester County, shellfish may be dredged on riparian grounds by the riparian owner by any means in any creek, cove, or inlet.

(b) The owner of any wharf or other structure constructed on or about the water and approved by the corps of engineers, shall have exclusive use, for the purpose of growing and harvesting shellfish, of the area:

- (1) Below the owner's wharf or structure; and



(2) In Calvert, Howard, St. Mary's, and Talbot counties only, within 5 feet of the owner's wharf or structure, oysters grown in trays, baskets, or containers that are attached to a private pier or wharf by lines or ropes that are the property of the owner of the pier or wharf.

SECTION 2. AND BE IT FURTHER ENACTED, That ~~any riparian owner who has used or is actively using any creek, cove, or inlet directly in front of his or her property for depositing oysters or other shellfish if the water surface at the mouth of the creek, cove, or inlet is 300 feet or less in width at mean low water shall have the right of first refusal to apply on or before December 31, 2011, for a submerged land lease for that area in accordance with the provisions of Title 4, Subtitle 11A of the Natural Resources Article~~ if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

**Approved by the Governor, May 19, 2011.**